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## RECENT DECISIONS

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**APPEAL AND ERROR—TIME FROM WHICH LIMITATION BEGINS TO RUN.**—The laws of New Mexico allow a writ of error within one year of "final judgment." A writ was sued out more than one year after judgment was entered by the *nisi prius* court, but less than one year after the denial of a motion for a new trial. *Held*, the writ was sued out in time. *Romero v. McIntosh* (N. M.), 145 Pac. 254.

This question has arisen in twenty-seven States (besides New Mexico) and in the Federal courts. Fourteen States have adopted the rule here laid down; the other thirteen hold that the time limit runs from the entry of the judgment, regardless of the motion for a new trial.

The discrepancy is, however, more apparent than real. Some of the majority cases are based on statute. *Murad v. R. Co.*, 34 R. I. 312, 83 Atl. 436. In a number of them the motion for a new trial was a condition precedent to the granting of any appeal at all. *Conradt v. Lepper*, 13 Wyo. 99, 78 Pac. 1, 3 Ann. Cas. 627.

In Missouri a distinction is drawn between cases where a motion for a new trial is a prerequisite for appeal, and cases where it is not. *Warren v. Badger*, 255 Mo. 138, 164 S. W. 206; *Walter v. Scofield*, 167 Mo. 537, 67 S. W. 276. But no such distinction is consistently followed by the cases. Where a motion for new trial was made it has been held that the time limit runs from the denial of the motion, although in the first instance no motion need have been made. *Stewart v. Mathews*, 19 Fla. 752. And on the other hand that the time limit runs from the entry of judgment, even where a motion for a new trial was a condition precedent to appeal. *St. Louis, etc., R. Co. v. Stapp* (Tex. Civ. App.), 171 S. W. 1080.

It is usual to limit appeals to a specified time "after final judgment." In regard to that phrase it has been said: "No judgment or decree can under our system be said to be final until the time prescribed by law in which a motion for a new trial may be made. \* \* \* has expired." *People's Bank v. Bank*, 116 Ga. 279, 42 S. E. 490. This definition of course supports the principal case.

The United States Supreme Court has applied the doctrine of the principal case. *U. S. v. Ellicott*, 223 U. S. 524, 56 L. Ed. 535. The contrary view is adopted in *Dowty v. People*, 58 Ohio St. 395, 50 N. E. 923; *Smith v. Silver*, 58 Neb. 429, 78 N. W. 725; *Gearin v. R. Co.*, 62 Ore. 162, 124 Pac. 256.

In general the alignment seems to be as follows, the rule in some cases resting upon the grounds already mentioned, and in a few states upon *dicta*—the statute begins to run from the entry of judgment: California, Illinois, Iowa, Kansas, Michigan, Missouri, Montana, Nebraska, Ohio, Oklahoma, Oregon, Pennsylvania, Texas. From denial of the motion for a new trial: Alabama, Colorado, Florida, Georgia,

Indiana, Kentucky, Louisiana, New Mexico, Rhode Island, Tennessee, Utah, Washington, West Virginia, Wyoming, United States.

CONFLICT OF LAWS—THE RIGHT OF A GUARDIAN TO CHANGE THE NATIONAL OR QUASI-NATIONAL DOMICIL OF A LUNATIC.—The appellant, Sumrall's Committee, resisted the taxation of Sumrall's property by the State of Kentucky, situated in Kentucky, on the ground that Sumrall was domiciled in the State of Maryland. The facts showed that Sumrall was 45 years of age and until 1905 had lived in Kentucky. He then became insane and was sent by his father to an asylum in Maryland. Later his father died and he was formally adjudicated insane and put in charge of a committee, a Kentucky corporation. The committee continued to keep Sumrall at the asylum in Maryland and now claims that Maryland is his domicil. *Held*, the committee had no authority to change the quasi-national domicil of its insane ward. *Sumrall's Committee v. Commonwealth* (Ky.), 172 S. W. 1057. See NOTES, p. 547.

CONFLICT OF LAWS—USURY.—A sale of Montana land took place in Minnesota, in which a partial payment was made in cash, and the rest in notes, payable in Minnesota. These notes bore interest at 6 per cent before, and 8 per cent after, maturity. Such an advance in interest constituted usury by Minnesota, but not by Montana law. It appeared that there was no intention to evade the usury law of Minnesota, that important elements of the sale took place in Montana, and that the intention of the parties was that the latter law should govern. *Held*, the law in the mind of the parties should govern. *Green v. Northwestern Trust Co.* (Minn.), 150 N. W. 229. See NOTES, p. 534.

CONSTITUTIONAL LAW—CLASS LEGISLATION—VALIDITY OF STATE STATUTES COMPELLING DISCRIMINATION IN FAVOR OF A CERTAIN CLASS.—Article 12, § 14 of the Missouri Constitution, makes it the duty of the legislature to prevent any discrimination in rates by the railroads of the State. A statute was enacted whereby the railroads were required to transport members of the National Guard when on an intrastate journey under the orders of the governor at a rate lower than that charged generally. *Held*, the statute is unconstitutional. *State v. Missouri, K. & T. R. Co.* (Mo.), 172 S. W. 35. See NOTES, p. 537.

CONSTITUTIONAL LAW—VALIDITY OF A STATE STATUTE FORBIDDING AN EMPLOYER TO EXACT AN AGREEMENT FROM AN EMPLOYEE NOT TO JOIN A LABOR UNION.—A statute made it a criminal act for an employer to exact an agreement from an employee not to join a labor union while in his employ. *Held*, the statute is unconstitutional, since it violates the Fourteenth Amendment protecting the freedom of contract from restrictive State laws. *Coppage v. Kansas*, 35 Sup. Ct. 240. See NOTES, p. 540.

CRIMINAL LAW—VALIDITY OF PLEA OF AUTREFOIS ACQUIT WHEN THE ACCUSED IS TRIED FOR PERJURY IN A FORMER TRIAL OF ANOTHER OFFENSE.—The defendant in a former trial for rape testified in his own defense